



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 25, 2022

IN THE MATTER OF:

Appeal Board No. 625110

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective January 27, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by DICK'S SPORTING GOODS INC prior to January 27, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed August 4, 2022 (), the Administrative Law Judge modified the initial determination to be effective February 2, 2022, and, as so modified, sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a sporting goods store chain as a material handler for over one year until February 2, 2022. On February 2, 2022, the claimant was called into a meeting with the employer's human resources manager, KS, in KS's office. During the meeting, KS yelled at him and called him names. The claimant forcibly opened a door and accidentally slammed it into a wall. KS told him he was discharged. The claimant had received no prior warnings. After he was discharged, the claimant threw water on KS from his water bottle. The claimant did not direct vulgarity to KS.

OPINION: The credible evidence establishes that the employer discharged the claimant because the employer concluded that the claimant was insubordinate after he accidentally slammed a door. We credit the claimant's firsthand testimony that he did not use vulgarity and threw water on KS after he was discharged. It is significant that the claimant had received no prior warnings. Given that KS yelled at him and called him names during the meeting, we find that claimant's behavior was an isolated instance of poor judgment and not misconduct. Accordingly, we conclude that the claimant was separated from employment under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective January 27, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to January 27, 2022 cannot be used toward the establishment of a claim for benefits, as modified to be effective February 2, 2022, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER